

**IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

**IN RE: NATIONAL FOOTBALL LEAGUE
PLAYERS' CONCUSSION INJURY
LITIGATION**

Kevin Turner and Shawn Wooden,
*on behalf of themselves and
others similarly situated,*

Plaintiffs,

v.

National Football League and
NFL Properties LLC,
successor-in-interest to
NFL Properties, Inc.,

Defendants.

Nos. 18-2012, 18-2225, 18-2249,
18-2253, 18-2281, 18-2332, 18-
2416, 18-2417, 18-2418, 18-2419,
18-2422, 18-2650, 18-2651, 18-
2661, 18-2724

PROPOSAL FOR CONSOLIDATION OF APPELLANTS' BRIEFS

The Locks Law Firm, which is Co-Class Counsel in the underlying class action Settlement with the NFL Parties, respectfully submits this Proposal for the consolidation of the Appellants' briefs. The Appellants consent and support this Proposal (or, with respect to the Faneca Appellant-Objectors, do not oppose it). On February 27, 2019, the Court issued an Order directing Appellants to "file a proposal for consolidation for purposes of Appellants' briefs." Soon thereafter, Appellants conferred by email and held a conference call to discuss the range of issues presented by the consolidated appeals, the suitability of those issues for joint

briefing, and the approach to Appellants' briefing that will provide the greatest assistance to the Court while also permitting all Appellants to advance their respective arguments.

I. Description of Issues on Appeal

This consolidated proceeding involves appeals from the following orders issued by the district court addressing the following matters:

- The Explanation and Order allocating the common benefit fee award to individual law firms, issued on May 24, 2018 (Docket No. 10019)
- The Memoranda and Orders awarding aggregate common benefit attorney's fees and awarding common benefit expenses, issued on April 5, 2018 and April 12, 2018 (Docket Nos. 9860, 9861 & 9876)
- The Memoranda and Orders providing that 5% of each individual player's total award will be held back and kept in the common benefit fee fund, issued on April 5, 2018 and June 27, 2018 (Docket Nos. 9862, 9863 & 10104)
- The Memoranda and Orders imposing a cap on the percentage fee that attorneys can charge pursuant to retainer agreements when individual players secure awards, issued on April 5, 2018 and June 27, 2018 (Docket Nos. 9862, 9863 & 10103)

All Appellants have appealed from the Order issuing the fee allocation award. Some Appellants have appealed from Orders awarding the full amount of common benefit fees and expenses, relating to the cap on contingency fees in individual retainer agreements, and relating to the 5% holdback.

II. Briefing Plan

After conferring on the issues and arguments that Appellants anticipate advancing in this appeal, Appellants propose the following.

A. Joint Brief Regarding the Fee Allocation Order

Appellants will submit a joint brief on issues relating to the infirmities in the process that the district court followed in making its determination regarding the allocation of common-benefit fees. The Locks Law Firm will present that joint brief, with input from all Appellants. This will be the principal argument on the due process and abuse of discretion issues relating to the district court's approach to the allocation process. The goal will be to provide a treatment of these process issues that all Appellants will endorse and to avoid duplication of those arguments in individual briefing.

B. Briefs Regarding the Orders Awarding the Full Amount of Aggregate Common Benefit Fees and Expenses

Several Appellants have appealed from the Orders issuing the aggregate award of common-benefit fees and expenses. Those Appellants will coordinate the drafting of their individual briefs with a goal of avoiding duplication of arguments. If possible, those Appellants will submit a joint brief on overlapping issues regarding the issuance of the aggregate award of common-benefit fees, but Appellants are not yet able to say whether those issues will lend themselves to joint treatment.

C. Joint Brief Regarding the 5% Holdback on Fees or Awards

Several Appellants have appealed from the Orders relating to the issuance of the 5% holdback. Those Appellants expect to submit a joint brief addressing the impropriety of that tax on individual attorney contingency fees and awards of unrepresented players, with input from all interested Appellants. Conversations are underway to determine which Appellant is best situated to draft the joint brief on

this issue. The goal will be to provide a treatment of the improper nature of that tax that all interested Appellants will endorse and to avoid duplication of those arguments in individual briefing.

D. Briefs Regarding the 22% Cap on Contingency Fee Awards

Several Appellants have appealed from the Orders relating to the imposition of a 22% cap on contingency fee awards. Those Appellants will coordinate the drafting of their individual briefs with a goal of avoiding duplication of arguments.

E. Appellants' Individual Briefs

Each Appellant will file an individual brief in which it will advance its own arguments concerning its respective allocation of common-benefit fees. The goal will be for the individual briefs to coordinate with the arguments in the joint brief filed by the Locks Law Firm concerning the infirmity of the fee allocation process, with each individual brief illustrating the prejudice that the Appellant has experienced as a result of those procedural infirmities and raising any other arguments each Appellant may have concerning individual fee allocations. Each Appellant reserves the right to address the full merits of that or any other issue in its individual brief, with a goal of coordinating with the joint briefs to avoid repetition.

Appellants authoring joint briefs will also use those briefs to address their respective individual fee allocations and any other arguments in clearly identified separate sections where they will speak only for themselves. For example, the brief submitted by the Locks Law Firm will include the joint treatment of process infirmities in the fee allocation described above and also separate sections in which the Locks Law Firm, speaking only for itself, will address the errors in the district

court's treatment of the firm in its individual fee allocation. Other Appellants authoring joint briefs will do likewise, identifying sections of their briefs that address joint issues endorsed by other Appellants and sections where they raise individual arguments in which they speak only for themselves.

Insofar as Appellees have raised questions about the standing of some Appellants to advance some arguments, each Appellant will address those standing questions in their respective individual briefs.

F. Reply Briefs

Appellants will follow the same basic approach for reply briefs. Each Appellant will submit an individual reply brief as needed. The authors of the joint briefs will submit joint reply briefs with input from appropriate Appellants, and those briefs will also include clearly identified sections in which the authors will speak only for themselves and address individual reply issues, as appropriate.

G. Briefing Deadline

Pursuant to the motion for extension of time filed by the Locks Law Firm on February 21, 2019 and in light of the Court's Order that the "briefing schedule . . . be stayed pending resolution of the consolidation issue," Appellants respectfully request that the Court extend the deadline for Appellants to submit all opening briefs and the joint appendix to sixty (60) days following the Court's resolution of the coordination issue presented herein.

Dated: March 11, 2019

Respectfully Submitted,

/s/ Tobias Barrington Wolff
Tobias Barrington Wolff

Professor of Law,
University of Pennsylvania Law School*
3501 Sansom Street
Philadelphia, PA 19104
Phone: 215-898-7471
twolff@law.upenn.edu

*For identification purposes only

and

Gene Locks
David D. Langfitt
LOCKS LAW FIRM
The Curtis Center
Suite 720 East
601 Walnut Street
Philadelphia, PA 19106
Phone: 215-893-3423
Fax: (215) 893-3444
glocks@lockslaw.com
dlangfitt@lockslaw.com

**Counsel for Appellant
the Locks Law Firm**

CERTIFICATE OF SERVICE

I, David D. Langfitt, hereby certify that on the 11th day of March 2019, I electronically transmitted a true and correct copy of the foregoing document, Proposal for Consolidation Of Appellants' Briefs, to the Clerk of the Court using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to all attorneys of record who are ECF registrants. I also certify that on said date one copy of the aforementioned document was served by UPS overnight delivery on the following Appellees counsel of record at the addresses indicated below:

Christopher A. Seeger, Esquire
Seeger Weiss LLP
55 Challenger Rd Ste 601
Ridgefield Park, NJ 07660

Samuel Issacharoff
NYU School of Law
Vanderbilt Hall 411J
40 Washington Sq. South
New York City, NY 10012

/s/ David D. Langfitt
David D. Langfitt
Counsel to Appellant the Locks Law Firm